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FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
MAY 29 2013

OFFICE OF
MANAGING DIRECTOR

David Tillotson, Esq.
4606 Charleston Terrace, NW
Washington, DC 20007-1911

Re: Waiver Request (Financial Hardship; 47 C.F.R.
§ 1.1166)
Licensee: Prieto Broadcasting, Inc.
Stations: WDUR and WETC
Fee: Fiscal Year (FY) 2012 Regulatory Fees
Filed: Sep. 4, 2012
Fee Control No.: RROG-12-00014626
Regulatory Fee (FY 2012): \$5,650.00

Dear Counsel:

This responds to Licensee's *Request*,¹ for waiver and deferment of the required Fiscal Year (FY) 2012 regulatory fees due for Stations WDUR and WETC. For the reasons stated herein, we dismiss and deny licensee's *Request* and require full payment of the fees. To avoid additional charges, full payment of the above amount must be received within 30 days from the date of this letter.

In establishing a regulatory fee program, the Commission recognized that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee. Such fees may be waived, reduced or deferred, but only upon a showing of good cause and a finding that the public interest will be served thereby.² The Commission has narrowly interpreted its waiver authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.³ Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public.⁴ "Mere allegations or documentation of financial loss, standing alone," do not suffice and "it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay

¹ Letter from David Tillotson, Esq., 4606 Charleston Terrace, N.W., Washington, DC 20007-1911 to David Robbins, Managing Director, FCC, 445 12th St., SW, Washington, DC 20554 (Aug. 22, 2012) (*Request*). Licensee included with the Request three exhibits: (1) Prieto Broadcasting NC, Inc., IRS Form 1120S for FY 2010, page 1 (Ex. A), (2) Prieto Broadcasting NC, Inc., IRS Form 1120S for FY 2011, page 1 (Ex. B), and (3) Prieto Broadcasting North Carolina, Inc. (PBI) Profit & Loss Statement, Jan. 1 thru Aug. 20, 2012 (Ex. C).

² 47 U.S.C. §159(d); 47 C.F.R. § 1.1166. *See also* Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1994, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995).

³ 9 FCC Rcd at 5344, ¶ 29.

⁴ 10 FCC Rcd at 12761-62, ¶ 13.

the regulatory fee and to maintain its service to the public.”⁵ In reviewing a showing of financial hardship, the Commission relies on a range of financial documents including a licensee’s balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. It is on this information that the Commission considers on a case-by-case basis whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.⁶ Thus, for example, even if a station loses money, any funds paid to principals and deductions for depreciation or amortization are considered funds available to pay the fees.

Licensee has the burden⁷ of demonstrating that a waiver or deferral would override the public interest, as determined by Congress, that the government should be reimbursed for the Commission’s regulatory action.⁸ For the following reasons, we find that Licensee did not present compelling and extraordinary circumstances.

Licensee did not meet our standard set forth at 47 C.F.R. § 1.1166 to demonstrate that on “a case-by-case” it has shown “good cause” and that the “waiver [of the required fee] would promote the public interest.”⁹ In that regard, Licensee’s supporting documentation is limited to (a) documents pertaining to another corporation that included the first page each of the 2010 and 2011 IRS Forms 1120S and a copy of the Profit and Loss statement for the first eight months of 2012 and (b) the assertion that Licensee “recently filed application for consent for [Licensee] to assign the license for Station WETC to Sanchez Broadcast Company (BAL-20120809AAI) ... in cancelation of delinquent debt.”¹⁰

For any one of the following reasons, this information is insufficient to meet our standard.¹¹ First, rather than submit its financial records, Licensee¹² submitted some financial

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*; *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971) (“burden is on the applicant seeking waiver of ... rules to plead specific facts and circumstances which would make the general rule inapplicable”); 47 C.F.R. § 1.1166. *See Bartholdi Cable Co., Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997) (“petitioner ... has the ‘burden of clarifying its position’ before the agency.”). *See also* 47 C.F.R. § 1.16 (An applicant is responsible for the continuing accuracy and completeness of information furnished.).

⁸ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“FCC may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.”); *Tucson Radio, Inc. v. FCC*, *supra*; 47 C.F.R. § 1.3.

⁹ 47 C.F.R. § 1.1166.

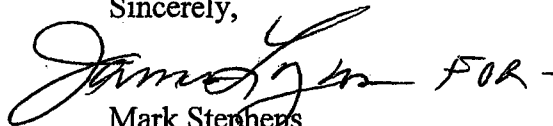
¹⁰ *Id.*

¹¹ 47 C.F.R. § 1.1166(c) (“Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.”); *In The Matter of Phoenix Broadcasting, Inc. Stations KSWD and KPFN Seward, Alaska, Memorandum Opinion and Order*, 18 FCC Rcd 26464, 26446, ¶¶ 5-6 (2003) (“Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee’s ability to serve the public. . . . [I]n the absence of a documented showing of insufficient funds to pay the regulatory fees, [applicant] has not made a compelling showing that overrides the public interest in the Commission’s recouping the costs of its regulatory activities.”).

documentation pertaining to Prieto Broadcasting NC, Inc.,¹³ an unrelated corporation. The relevance was not established. Second, Licensee did not fully document its position with a range of financial records.¹⁴ Rather, Licensee provided another entity's financial documents limited to partial tax returns and a profit and loss statement. Third, the documentation that was furnished, the IRS Forms 1120S, is incomplete. Those forms do not include the required and referred to statements and forms (e.g., Statements 1 and 2, and Form 4562¹⁵). Fourth, Licensee does not explain apparent significant differences in certain deducted amounts from year to year, and Licensee did not establish why assets of \$1,651,729, reported in tax year 2011 are not otherwise available to pay the fees. In that regard, because Licensee did not furnish a balance sheet, we are unable to ascertain the extent to which any liabilities may affect that corporation's ability to pay its obligations. Finally, Licensee did not provide sufficient detailed explanation and supporting documentation that the "recently filed application for consent ... to assign the license for Station WETC"¹⁶ establishes Licensee lacks sufficient funds to pay the fees and maintain service to the public. In the end, Licensee failed to establish that the financial information it furnished was relevant to the *Request* and that it demonstrated compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.¹⁷ Accordingly, we dismiss the petition to defer payment and deny the *Request* for a waiver of the required regulatory fee.

Payment of \$5,650.00, Licensee's FY 2012 regulatory fees, is now due, and that amount must be received, together with a Form 159 (copy enclosed), within 30 days of the date of this letter. If Licensee fails to pay the full amount due by that date, the debt will be delinquent. Thereafter, the statutory penalty of 25% of the unpaid fee,¹⁸ and interest and applicable additional penalties as may be required by 31 U.S.C. § 3717, will accrue from the date of this letter. Moreover, Licensee will be red lighted,¹⁹ and under the law,²⁰ the Commission will initiate collection proceedings. If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,


Mark Stephens
Chief Financial Officer

Enclosure

¹² Licensee, Prieto Broadcasting, Inc., is incorporated under the laws of the state of Georgia. FCC 323 Ownership Report for Commercial Broadcast Stations, File No. BOA-20111123MEM; see <http://prietobroadcasting.ecistech.com/profile.htm>.

¹³ Prieto Broadcasting NC, Inc., is registered in the state of North Carolina.

¹⁴ 10 FCC Rcd at 12761-62, ¶ 13.

¹⁵ Financial information reporting deductions from income are relevant to our determination.

¹⁶ *Request* at 1.

¹⁷ 9 FCC Rcd at 5344, ¶ 29; 47 C.F.R. § 1.1166(c).

¹⁸ 47 U.S.C. § 159(c)(1). See 9 FCC Rcd at 5346, ¶ 35 ("the petitioner will have 30 days to [pay the fee] in order to avoid the assessment of penalty charges and the invocation of any other available remedy. The filing of a petition for reconsideration will not toll this 30-day period.").

¹⁹ 47 C.F.R. § 1.1910.

²⁰ See 47 C.F.R. § 1.1901, *et seq.*